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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/169195

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 06, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc in regard to Medical Assistance, a hearing was held on November 10, 2015, at West Bend, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner is no longer functionally eligible for the Family Care Program (FCP) at the nursing home level of care.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Liz Wesolek  
Care Wisconsin First, Inc  
2802 International Lane  
Madison, WI 53704-3124

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Washington County. The petitioner was enrolled and received services through the Family Care Program (FCP).
2. On September 23, 2015 the FCP completed a Long-Term Care Functional Screen (LTCFS) of the petitioner. The LTCFS determined that the petitioner needed help grocery shopping and filling

her medications. She was independent with all of her Activities of Daily Living (ADLs) and remaining Instrumental Activities of Daily Living (IADLs). The result of this LTCFS was that the petitioner was eligible for the FCP at the non-nursing home level of care. She was no longer eligible for the program at the nursing home level of care.

3. On September 23, 2015 the FCP sent the petitioner a notice stating that she was no longer eligible for the FCP at the nursing home level of care. The notice went on to state that she was eligible at the non-nursing home level of care, and would be enrolled at that level of care effective October 8, 2015.
4. On October 6, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
5. On October 23, 2015 the FCP completed another LTCFS to again assess the petitioner's needs. The results of this rescreen were identical to the results of the September 23, 2015 LTCFS.
6. The petitioner previously had cardiac surgery. Following the surgery she stayed at a skilled nursing facility. She was eligible for the FCP at the nursing home level of care when she left that skilled facility. At this point her cardiac issues have improved, and she is more independent. The petitioner is diagnosed with somatoform disorder. This is a mental health disorder. The petitioner has been disabled due to this mental health condition since February 1992. Her enrollment in the FCP was post cardiac surgery, and closely related to that condition rather than the petitioner's mental health condition. The petitioner lives alone.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Adm. Code, §DHS 10.33(2) provides that an FCP applicant must have a functional capacity level of comprehensive or intermediate; I note here that Wis. Stat., §46.286, uses the terms "nursing home" and "non-nursing home" levels just as the agency in this case. If the person meets the comprehensive (nursing home) level, she is eligible for full services through a care management organization (CMO), including Medical Assistance (MA). Wis. Adm. Code, §DHS 10.36(1)(a). If the person meets the intermediate (non-nursing home) level, he is eligible for full services only if he is in need of adult protective services, he is financially eligible for MA, or she is grandfathered as described in §DHS 10.33(3). Wis. Adm. Code, §DHS 10.36(1)(b). A person eligible under the non-nursing home level is eligible for less FCP services.

Wis. Adm. Code, §DHS 10.33(2)(c) describes comprehensive functional capacity:

*(c) Comprehensive functional capacity level.* A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.

5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
  - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
  - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Adm. Code, §DHS 10.33(2)(d) describes intermediate functional capacity:

- d) *Intermediate functional capacity level.* A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:
  1. One or more ADL.
  2. One or more of the following critical IADLs:
    - a. Management of medications and treatments.
    - b. Meal preparation and nutrition.
    - c. Money management.

The FCP completed two LTCFS of the petitioner. The results of both screens were that the petitioner needed assistance with grocery shopping and filling her medications. Management of medications and treatments and meal preparation and nutrition are both critical IADLs. She was independent with all of her Activities of Daily Living (ADLs) and remaining Instrumental Activities of Daily Living (IADLs). Thus, the petitioner was eligible for the FCP at the non-nursing home level of care. She was no longer eligible for the FCP at the nursing home level of care.

At the hearing the petitioner appeared with her daughter. The petitioner's daughter disagreed with the results of both LTCFS. Her daughter highlighted the fact that the petitioner has gotten more forgetful. She has lost her hearing aids, glasses, and medication lists. She further argued that her mother's esophagus was damaged, and that her mother has swallowing issues. She stated that her mother had medical issues, and had not been taking her mental health medications as prescribed.

I agree with the petitioner's daughter that the petitioner is forgetful at times. However, this did not seem to impact the petitioner's ability to complete her ADLs and IADLs. The petitioner needs some assistance with management of medications and treatments, and for that reason she is eligible for the FCP at the non-nursing home level of care. I disagree with the petitioner's daughter that her mother has swallowing issues. There was a swallowing study done by a medical professional showing that the petitioner was able to swallow.

In determining whether the petitioner was eligible for the FCP I specifically looked at whether the petitioner required frequent medical or social intervention to safely maintain an acceptable health or developmental status; or required frequent changes in service due to intermittent or unpredictable changes

in his or her condition; or required a range of medical or social interventions due to a multiplicity of conditions. I find that she does not require these medical/social interventions or frequent changes. Even if she does not take her mental health medication perfectly, it is very close. If she is not taking a pill, it appears to be due to a possible or upcoming change in her mental health treatment.

I also looked at whether the petitioner had a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or had impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care. I do not find that this is the case. Again the petitioner is functioning fairly well. She is getting older, and more forgetful. Her moments of forgetfulness do not rise to this level, and therefore she is not eligible at the nursing home level of care.

The petitioner will continue to receive services through the FCP at the non-nursing home level of care. One of the services that she will receive is case management. If the petitioner's condition worsens where it appears that she would be eligible at the nursing home level of care, the FCP may conduct a rescreen that would reflect those changes. At this point in time, the petitioner's condition does not rise to the nursing home level of care.

### **CONCLUSIONS OF LAW**

The agency correctly determined that the petitioner is no longer functionally eligible for the Family Care Program (FCP) at the nursing home level of care.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

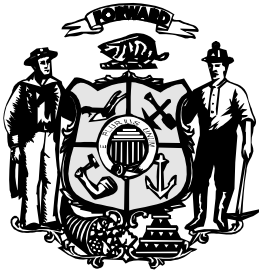
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of December, 2015

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 17, 2015.

Care Wisconsin First, Inc  
Office of Family Care Expansion  
Health Care Access and Accountability